

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-DL-696
	)	
Martin D. Marshall	)	NAL/Acct. No.200332500003
Owner of Antenna Supporting Structure 1220001	)	
located in Nacogdoches, Texas	)	FRN 0003-7544-54
Etoile, Texas	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** February 19, 2003

By the Enforcement Bureau, Dallas Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Martin D. Marshall (“Mr. Marshall”), owner of antenna supporting structure # 1220001 located in Nacogdoches, Texas, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Mr. Marshall apparently liable for failure to clean or repaint his antenna structure as often as necessary to maintain good visibility.

**II. BACKGROUND**

2. On October 23, 2002, the antenna structure bearing FCC antenna structure registration (“ASR”) number 1220001 and located at or near geographic coordinates 31° 34’ 58”N / 094° 39’ 59”W (incorrectly registered at geographical coordinates 31° 34’ 51”N / 094° 40’ 16”W) in Nacogdoches, Texas, was inspected by an agent of the Commission’s Dallas Field Office (“Dallas Office”). The Commission’s ASR database showed this structure was registered to Mr. Marshall and that the tower required marking and lighting. At the time of the inspection the paint on the tower was badly faded and was peeling, significantly reducing visibility of the structure to the extent that, during daylight hours, the bands could not be readily distinguished at approximately one fourth of a mile. Additionally, black cabling on the outside of the structure covered the painted metal tower further reducing visibility of the structure so that the bands were not readily distinguishable at closer distances to the tower.

3. On October 28, 2002, the agent interviewed the owner, Mr. Marshall, who stated he was aware that the tower was in need of painting and had been in contact with tower painters.

**III. DISCUSSION**

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<sup>1</sup> 47 C.F.R. § 17.50.

4. Section 17.50 of the Rules states that antenna structures requiring painting under this part shall be cleaned or painted as often as necessary to maintain good visibility. Mr. Marshall is the registered owner of antenna structure number 1220001 and is responsible for maintaining the structure's marking.<sup>2</sup> The ASR for this structure requires that the structure be painted. On October 23, 2002, Mr. Marshall failed to maintain good visibility of his antenna structure number 1220001 located in Nacogdoches, Texas.

5. Based on the evidence before us, we find Martin D. Marshall willfully<sup>3</sup> violated Section 17.50 of the Rules by failing to clean or repaint the antenna structure as often as necessary to maintain good visibility of the antenna structure markings.

6. Pursuant to Section 1.80(b)(4) of the Rules,<sup>4</sup> the base forfeiture amount for failure to comply with the prescribed marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> Martin D. Marshall is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules by failing to clean or repaint the antenna structure as often as necessary to maintain good visibility of the antenna structure markings.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Martin D. Marshall SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL

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<sup>2</sup> See 47 C.F.R. § 17.6(a).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Martin D. Marshall, P.O. Box 532, Etoile, Texas 75944.

#### FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
Dallas Office, Enforcement Bureau

Attachment

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<sup>8</sup> See 47 C.F.R. § 1.1914.